IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 4562 OF 2002

Ericson A. Martin.... .... Petitioner.
V/s
Union of India & Ors..... ....
Respondents.

Mr.Saikumar Ramamurthy for the petitioner.

Mr.Suresh Kumar for the Respondents.

CORAM:V.G. PALSHIKAR, Ag. C.J.

AND

SMT.NISHITA MHATRE, J.

18th January, 2006.

Oral Judgment: (Per Ag. C.J.)

By this petition the petitioner has made the following prayers :

"(a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction and call for record and proceedings leading to the passing of the Order dated 21.01.2000/07.02.2000 by Respondent No.2, in so far as it affirms the Order of Respondent No.3 treating the period from 25.05.1997 to 26.07.1998 as leave of the kind due and after examining the legality and/or the propriety of the same, quash and set aside the said order.

(b) That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction and direct the Respondents to treat the period from 25.05.1997 to 26.07.1998 as duty for all purposes and pay the Petitioner the emoluments for the said period with interest @ 18% p.a. till payment.

(c) That this Hon'ble Court be pleased to issue a writ of mandamus or other appropriate writ, order or direction and direct the Respondents to grant him the V Pay Commission benefits from 01.01.1996 properly till date with fixation and arrears arising therefrom with interest @ 18% p.a. From the due date till payment.

(d) That this Hon'ble Court be pleased to issue appropriate direction to the Respondents to grant the Petitioner the ration allowance and bonus for the year 1997-98.

(e) That this Hon'ble Court be pleased to issue a writ of mandamus or other appropriate writ, order or direction and direct the respondents to grant the Petitioner ACP to grade Rs.8000-13500/- w.e.f. 01.01.1999 on par with his juniors.

(f) That pending the hearing and final disposal of this Petition, the respondents be directed to pay the Petitioner the pay scale of Rs.8000-13500/- from the current month onwards.

(g) That ad-interim relief in terms of prayers (f) above be granted.

(h) That such other and further writ, order or direction be passed as the facts and circumstances of the case may require.

(i) That costs of this Petition be provided for."

2. Respondent No.2 confirmed the order passed by respondent No.3 treating the absence from 25.5.1997 to 26.7.1998 as period spent on leave of whatever kind due. This order is questioned on the ground that he could have been considered as on duty. However no illegality or irregularity is shown to have been committed while passing this order. In writ jurisdiction no interference is therefore called for. For the same reasons prayer (b) which claims a direction to respondents to treat that period on duty is liable to be rejected.

3. In so far as prayer (c) is concerned respondents 2 and 3 have categorically admitted in para 8 of their reply that the petitioner shall be accordingly fixed in the proper pay scale. Reply in para 8 reads thus:

"8. I say that so far the relief pertaining to fixing of pay as per the Vth Pay Commission is concerned the same shall be fixed by the Respondents in accordance with the law and rules taking into

account penalty imposed on the petitioner by order dated 28.06.1998."

4. We therefore direct the respondents to fix the pay of the petitioner according to Vth Pay Commission in accordance with law and rules in that regard after taking into consideration the penalty imposed on the petitioner by order dated 28.6.1998. In so far as granting of ACP grade to the petitioner is concerned the reply observes in para 7 that the case of the petitioner was considered for grant of ACP and promotion but he was found unfit. The prayer (e) and (f) cannot therefore be granted. Other prayers are incidental. In the result, petition is partly allowed as aforesaid. There shall be no order as to costs.